

JUDGE SAND

06 CV 13267

470-06/DPM/LJK

FREEHILL HOGAN & MAHAR, LLP

Attorneys for Plaintiff

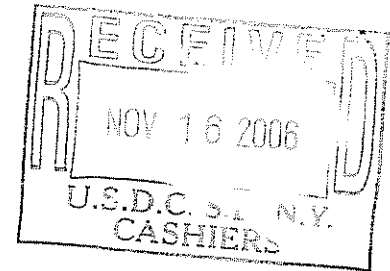
Mountiko Marine Co. Ltd.

80 Pine Street

New York, NY 10005

(212) 425-1900

(212) 425-1901 fax



Don P. Murnane, Jr. (DM 3639)

Lawrence J. Kahn (LK 5215)

Pamela L. Schultz (PS 0335)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MOUNTIKO MARINE CO. LTD.,

Plaintiff,

06 CIV

VERIFIED COMPLAINT

-against-

FORBES GOKAK LTD.,

Defendant.

-----X

Plaintiff MOUNTIKO MARINE CO. LTD. (hereinafter, "MMC"), through its attorneys Freehill Hogan & Mahar, LLP, as and for its Verified Complaint against Defendant FORBES GOKAK LTD. (hereinafter collectively, "FORBES"), alleges upon information and belief as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure in that it involves a claim for the breach of a maritime contract of charter party. The case also falls within the Court's admiralty and maritime jurisdiction pursuant to 28 U.S.C. §1333. Finally, the Court has jurisdiction pursuant to 9 U.S.C. §203, which provides that any action or proceeding falling under the

Convention for the Recognition and Enforcement of Foreign Arbitral Awards shall be deemed to arise under the laws and treaties of the United States.

2. At all times relevant hereto, Plaintiff MMC was and still is a foreign business entity duly organized and existing under the laws of a foreign country with an address at 3rd Floor, Kolokasides Building, 1 Costakis Pantelides Ave., Nicosia 1010, Cyprus.

3. At all times relevant hereto, Defendant FORBES was and still is a business entity organized and existing under the laws of a foreign country with an address at Saki Powai Road, Chandivali, Mumbai-400072, India.

4. On or about March 1, 2006, Plaintiff MMC as owners, and Defendant FORBES as charterers, entered into a maritime contract of charter party, for the time charter of the M/V PELAGOS on the New York Produce Exchange Government Form. According to the charter party, the vessel was to be delivered, and time on the charter party was to commence no sooner than March 10, 2006. The charter provided also that FORBES would have use of the vessel for six months, plus or minus thirty days in FORBES's option.

5. MMC met all of its obligations under the charter party, and the vessel entered FORBES's service on March 10, 2006.

6. The charter party required, among other things, that FORBES pay charter hire in full and on time. The agreed charter hire rate was \$7,250 per day.

7. Since the charter party was for a maximum of six months plus thirty days, the last day when FORBES was authorized under the contract to use the vessel was October 10, 2006.

8. In breach of the contract, FORBES has continued and continues to use the vessel, with an estimated day of redelivery of November 30, 2006, more than seven weeks beyond the time when the vessel should have been redelivered.

9. Subsequent to the time that MMC and FORBES entered into the subject charter party, the market rate for the chartering of vessels like the M/V PELAGOS increased substantially. On the expectation that the vessel would be delivered within the maximum seven month period under the charter (through October 10, 2006), MMC made arrangements to charter the M/V PELAGOS upon its return from FORBES at the rate of \$13,500 per day, plus certain other expenses in the charter party agreement.

10. Thus, for the period between October 10, 2006 (when the vessel should have been redelivered by FORBES) and November 30, 2006 (when it is anticipated that the vessel will be redelivered), MMC has lost profits of \$6,250 per day ($\$13,500 - \$7,250 = \$6,250$).

11. FORBES has also breached the charter in failing to pay a portion of the full amount of charter hire due, in breach of the charter party contract.

12. Annexed as Exhibit A to this Verified Complaint are MMC's invoices numbered 15-19 to FORBES for itemized amounts owed to MMC as follows:

a) **Charter Hire Invoice No. 15**, for the period October 10-18, 2006, shows that FORBES owed \$62,095 (8 days at \$7,250 per day, plus a ½ share of loading survey fees of \$2,675, plus additional lump sum extra war risk coverage of \$4,000, plus other miscellaneous expenses of \$320 less \$2,900 in brokerage and commissions) as of the time of that invoice;

b) **Charter Hire Invoice No. 16**, for the period October 18-25, 2006, shows that FORBES owed \$174,154.20 (comprising \$62,095 still unpaid from Invoice No. 15, plus \$22,003.20 for bunkers, plus \$50,750 for 7 days charter hire at the expired charter hire rate of \$7,250/day, plus a further \$43,750 in damages for the difference in market hire rate of 7 days charter hire at an additional \$6,250/day, plus miscellaneous expenses of \$280 less brokerage and commission of \$4,724) as of the time of that invoice;

c) **Charter Hire Invoice No. 17**, for the period October 25-November 4, 2006, shows that FORBES owed \$207,166.70¹ (comprising \$174,154.20 from Invoice No. 16 less remittances of \$95,637.50, plus \$72,500 for 10 days charter hire at the expired charter hire rate of \$7,250/day, plus a further \$62,500 in damages for the difference in market hire rate of 10 days charter hire at an additional \$6,250/day, plus miscellaneous expenses of \$400, less brokerage and commission of \$6,750) as of the time of that invoice;

d) **Charter Hire Invoice No. 18**, for the period of November 4-10, 2006, shows that FORBES owed \$284,356.70² (comprising the corrected unpaid balance from Invoice No. 17 of \$207,166.70 plus an additional \$43,500 for 6 days charter hire at the expired charter hire rate of \$7,250/day plus a further \$37,500 in damages for the difference in market hire rate of 6 days charter hire at an additional \$6,250/day, plus miscellaneous expenses of \$240, less brokerage and commissions of \$4,050) as of the time of that invoice; and

¹ Invoice No. 17 contains a twenty cent mathematical error, so where Invoice No. 17 states that \$207,166.50 was owed, the actual amount should be \$207,166.70. This minor error is carried over onto Invoices 18 and 19, thus each invoice is off an additional twenty cents.

² Invoice No. 18 carries over the error from Invoice No. 17, so where Invoice No. 18 states that \$207,166.50 was owed, the actual amount should be \$207,166.70.

e) **Charter Hire Invoice No. 19** is for the period of November 10-30, 2006 (November 30 being the earliest expected redelivery date). Invoice No. 18 shows that FORBES owes \$551,106.70³ (comprising the corrected unpaid balance from Invoice No. 18) plus an additional \$145,000 for 20 days charter hire at the expired charter hire rate of \$7,250/day plus a further \$125,000 in damages for the difference in market hire rate of 20 days charter hire at an additional \$6,250/day, plus miscellaneous expenses of \$800 less brokerage and commissions of \$4,050) resulting in a total estimated invoice in this amount due from FORBES at the anticipated time of redelivery on November 30, 2006.

13. To date, only \$95,637.50 has been paid by FORBES, thus, the total amount of unpaid hire and damages is, as near as may presently be estimated, \$551,106.70.

14. MMC has made due demand of FORBES to pay, but FORBES has refused or otherwise failed to pay.

15. The charter party between MMC and FORBES provides that it is subject to English law and arbitration in London, and arbitration has been commenced by Plaintiff against Defendant for the above sums due. Plaintiff specifically reserves its right to arbitrate the substantive matters at issue herein, and to seek an increase in the amount of security should the requested amount be insufficient to fully secure Plaintiff's claim. Plaintiff also expressly reserves and does not waive its rights to arbitrate any other disputes which arise under the charter party.

³ Invoice No. 19 carries over the error from Invoice No. 17, which was carried over onto Invoice No. 18, so where Invoice No. 19 states that \$284,356.50 was owed, the actual amount should be \$284,356.70. There is another minor mathematical error on the actual invoice, which is overstated by \$8.80. The correct amount is \$551,106.70.

16. English law allows for the recovery of arbitrators' fees and attorneys fees and disbursements as part of the normal "cost" of proceedings. MMC estimates that arbitrators' fees, attorneys fees and disbursements will be, as nearly as presently may be calculated, \$100,000, and that interest due will be a further \$85,793.00.⁴

17. The total amount of Plaintiff MMC's claim for damages from the refusal or failure of FORBES to pay charter hire as required, and for damages for keeping the vessel beyond the redelivery date is thus calculated at \$736,899.70. Plaintiff reserves the right to amend this figure if the vessel is not redelivered on November 30, 2006 and/or the vessel is delivered with different remaining bunkers than that as estimated by Plaintiff.

18. Upon information and belief, and after investigation, Defendant FORBES cannot be "found" within this District for the purpose of Rule B of the Supplemental Rules of Certain Admiralty and Maritime Claims, but Plaintiff is informed that Defendant has, or will shortly have, assets within this District comprising, *inter alia*, cash, funds, credits, debts, wire transfers, accounts, letters of credit, freights, sub-freights, charter hire and/or sub-charter hire, of, belonging to, due or for the benefit of Defendant FORBES ("ASSETS"), including but not limited to ASSETS at, being transferred through, or being transferred and/or wired to or from JPMorgan Chase Bank, Citibank, American Express Bank, Bank of America, The Bank of New York, HSBC, HSBC USA Bank NA, BNP Paribas, Deutsche Bank Trust Co., Wachovia Bank, ABN Amro, Atlantic Bank of New

⁴ Interest is calculated at 7.3%, which is the average US 3 month LIBOR rate plus 2%, over a period of 2 years on the base amount of the claim. Rules of London arbitration allow for recovery of interest at this rate, compounded, typically, at quarterly rests, and 2 years is typical of the length of time from initiation of London arbitral proceedings to entry of judgment on the award rendered therein on a dispute of this nature.

York, Standard Chartered Bank, Bank of India, and/or other institutions or such other garnishees who may be served with a copy of the process of Attachment issued herein.

19. The total amount of Plaintiff MMC's claim sought to be attached pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims against FORBES is \$736,899.70.

WHEREFORE, Plaintiff MMC prays:

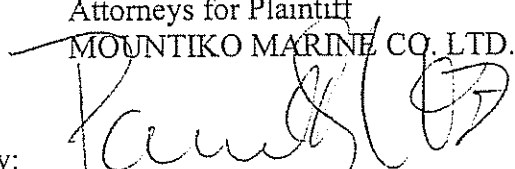
- a. That process in due form of law according to the practice of this Court may issue against Defendant FORBES, citing it to appear and answer the foregoing, failing which a default will be taken against it for the principal amount of the claim plus interest;
- b. That if Defendant FORBES cannot be found within this District pursuant to Supplemental Rule B that all assets of Defendant FORBES, up to \$736,899.70, to provide full security (as nearly as presently may be calculated) for Plaintiff MMC's claim be restrained and attached, including, but not limited to any cash, funds, credits, debts, wire transfers, accounts, letters of credit, freights, sub-freights, charter hire, sub-charter hire, and/or other assets of, belonging to, due or for the benefit of Defendant FORBES, by JPMorgan Chase Bank, Citibank, American Express Bank, Bank of America, The Bank of New York, HSBC, HSBC USA Bank NA, BNP Paribas, Deutsche Bank, Wachovia Bank, ABN Amro, Atlantic Bank of New York, Standard Chartered Bank, Bank of India and/or any other garnishee(s) upon whom a copy of the Process of Maritime Attachment and Garnishment issued herein may be served;

- c. That the Court enter an order directing Defendant FORBES to appear and respond in arbitration pursuant to the terms of the charter party; and
- d. That the Plaintiff have such other, further and different relief as this Court may deem just and proper in the premises.

Dated: New York, New York
November 14, 2006

FREEHILL HOGAN & MAHAR, LLP
Attorneys for Plaintiff
MOUNTIKO MARINE CO. LTD.

By:




Don P. Murnane, Jr. (DM 3639)
Pamela L. Schultz (PS 0335)
Lawrence J. Kahn (LK 5215)
80 Pine Street
New York, NY 10005
(212) 425-1900
(212) 425-1901 fax

ATTORNEY VERIFICATION

State of New York)
) ss.:
County of New York)

Pamela L. Schultz, being duly sworn, deposes and says:

1. I am an associated with the law firm of Freehill Hogan & Mahar, LLP, attorneys for the Plaintiff in this action, I have read the foregoing Verified Complaint and know the contents thereof, and the same is true to the best of my knowledge, information and belief.
2. The sources of my information and the grounds for my belief are communications and documents provided by our client regarding the claim.
3. The reason this verification is made by an attorney and not by the Plaintiff is because the Plaintiff is a foreign entity, none of whose officers are presently within this Judicial District.



Pamela L. Schultz

Sworn to before me this
14 day of November, 2006


Notary Public

HAZEL S. ROSENTHAL
Notary Public, State of New York
No. 01RO4641178
Qualified in Queens County
Certified in New York County
Commission Expires Dec. 31, 2008

16 Nov 06 17:24

p. 6

MOUNTIKO MARINE COMPANY LTD.

Date: 10th October 2006

M.V. PELAGOS

Voyage No. 3

A/C: M/s. FORBES GOKAK LIMITED - C/P Dated 01.03.2006

CHARTER HIRE INVOICE - NO 15 (15th HIRE)

Details	In service from	Rates (\$)	From (Gmt)	To (Gmt)	Total Amount (\$)
Time Charter	10/03/2006 00:01	7,250.00	10/10/2006 00:01	18/10/2006 00:01	58,000.00
C / E / V		1,200.00	per month		320.00
					\$58,320.00

\$58,320.00

TOTAL HIRE DUE

PLUS:

(A) ETIC sas fees for loading survey India Charterers agreed ½ share
(B) Additional Extra War Risks for Nigeria covering 10/days period (lumpsum)

\$ 2,675.00

\$ 4,000.00

LESS: DEDUCTIONS

(A) BRKGE & COMMISSION

@ 5.00%

\$ 2,900.00

\$ 2,900.00

\$ 62,095.00

NET DUE TO OWNERS ON CHARTER HIRE

(UNITED STATES DOLLARS SIXTY TWO THOUSAND AND NINETY FIVE ONLY)

Please arrange to remit to our nominated bank account details as under :

Banking Details :-

EGNATIA BANK

PIRAEUS BRANCH

CODE 301

GREECE

SWIFT : EGNAGR2T

IBAN : GR65 0280 3010 0000 0009 5289 424

ACCOUNT NR : 0095289424

FOR THE CREDIT OF:

MOUNTIKO MARINE COMPANY LIMITED

s.e.&o.

for MOUNTIKO MARINE COMPANY LTD

~~MOUNTIKO MARINE
COMPANY LIMITED~~

Nicosia, Cyprus

(authorised signatory)

NICOSIA, CYPRUS

EXHIBIT

A

16 Nov 06 17:24

p.5

MOUNTIKO MARINE COMPANY LTD.

Date: 18th October 2006

M.V. PELAGOS

Voyage No. 3

A/C: M/s. FORBES GOKAK LIMITED - C/P Dated 01.03.2006

CHARTER HIRE INVOICE - NO 16 (16th HIRE)

Details	In service from	Rates (\$)	From (Gmt)	To (Gmt)	Total Amount (\$)
Time Charter	10/03/2006 00:01	7,250.00	18/10/2006 00:01	25/10/2006 00:01	50,750.00
C / E / V		1,200.00	per month		280.00
					\$51,030.00

TOTAL HIRE DUE**\$51,030.000****PLUSS:**(A) Net amount due from unpaid 15th hire invoice**\$62,095.00**

(B) Difference IFO from delivery vis-à-vis redelivery i.e. on delivery ROB 532.160, expect on re-delivery 463.40 (ROB sailing P.Harcourt 491.187/mtn less steaming 1.2/days @ 23/mtn = 27.600/mtn, thus ROB ifo Cotonou 463.400/mtn) 68.760/mtns @ \$320/pmt

\$22,003.20

(C) Difference in Charter Hire Rate, the vessel being outside the time/charter period as from 10/10/06 @00:01 gmt(completion of 6/mos time/charter plus 30/days optional period) present market hire rate \$ 13,500/day pro rata from 10/10/06 00:01 to 25/10/06 00:01 gmt @ \$6,250/per day

\$43,750.00**LESS: DEDUCTIONS**

(A) Brokerage and Commission on agreed hire rate @ 5.00% \$ 2,537.00

\$2,537.00

(B) Brokerage and Commission on current market's rat @ 5.00% \$ 2,187.00

\$2,187.00**NET DUE TO OWNERS ON CHARTER HIRE****\$174,154.20**

(UNITED STATES DOLLARS ONE HUNDRED SEVENTY FOUR THOUSAND, ONE HUNDRED FIFTY FOUR AND TWENTY CENTS ONLY)

Please arrange to remit to our nominated bank account details as under :

Banking Details :-

EGNATIA BANK

PIRAEUS BRANCH

CODE 301

GREECE

SWIFT : EGNAGR2T

IBAN : GR65 0280 3010 0000 0009 5289 424

ACCOUNT NR : 0095289424

FOR THE CREDIT OF:

MOUNTIKO MARINE COMPANY LIMITED

s.e.&o.

for MOUNTIKO MARINE COMPANY LTD

~~MOUNTIKO MARINE
COMPANY LIMITED~~

Nicosia, Cyprus
P.Zaraphotis

(authorised signatory)

NICOSIA, CYPRUS

MOUNTIKO MARINE COMPANY LTD.

Date: 25th October 2006

M.V. PELAGOS

Voyage No. 3

A/C: M/s. FORBES GOKAK LIMITED - C/P Dated 01.03.2006

CHARTER HIRE INVOICE - NO 17 (17th HIRE)

Details	In service from	Rates (\$)	From (Gmt)	To (Gmt)	Total Amount (\$)
Time Charter	10/03/2006 00:01	7,250.00	25/10/2006 00:01	04/11/2006 00:01	72,500.00
C / E / V		1,200.00	per month		400.00
					<u>\$72,900.00</u>

TOTAL HIRE DUE \$72,900.00

PLUS:

(A) Net amount due from unsettled 16th charter hire invoice \$174,154.20

(C) difference in charter hire rate i.e. 10 days @ \$6,250.00 \$62,500.00

LESS: DEDUCTIONS

(A) Brokerage and Commission on agreed hire rate @ 5.00% \$3,625.00 \$3,625.00

(B) Brokerage and Commission on current market's rate @ 5.0% \$3,125.00 \$3,125.00

(C) Charterers' remittances of \$34,637.50 and \$61,000.00 \$95,637.50 \$95,637.50

NET DUE TO OWNERS ON CHARTER HIRE \$207,166.50

UNITED STATES DOLLARS TWO HUNDRED SEVEN THOUSAND, ONE HUNDRED SIXTY SIX AND FIFTY CENTS ONLY

Please arrange to remit to our nominated bank account details as under :

Banking Details :-

EGNATIA BANK

PIRAEUS BRANCH

CODE 301

GREECE

SWIFT : EGNAGR2T

IBAN : GR65 0280 3010 0000 0009 5289 424

ACCOUNT NR : 0095289424

FOR THE CREDIT OF:

MOUNTIKO MARINE COMPANY LIMITED

S.O.&O.

for MOUNTIKO MARINE COMPANY LTD

MOUNTIKO MARINE
COMPANY LIMITED

Nicosia, Cyprus
(authorised signatory)

NICOSIA, CYPRUS

16 Nov 06 17:23

p.3

MOUNTIKO MARINE COMPANY LTD.

Date: 2nd November 2006

M.V. PELAGOS

Voyage No. 3

A/C: M/s. FORBES GOKAK LIMITED - C/P Dated 01.03.2006

CHARTER HIRE INVOICE - NO 18 (18th HIRE)

Details	In service from	Rates (\$)	From (Gmt)	To (Gmt)	Total Amount (\$)
Time Charter	10/03/2006 00:01	7,250.00	04/11/2006 00:01	10/11/2006 00:01	43,500.00
C / E / V		1,200.00	per month		240.00
					\$43,740.00

TOTAL HIRE DUE

\$43,700.00

PLUS:

(A) Unpaid invoice No 17 / 25.10.06

\$207,166.50

(B) Difference in Charter/Hire rate i.e. 6/days @ 6,250.00

\$37,500.00

LESS: DEDUCTIONS

(A) Brokerage and Commission on agreed hire rate @ 5.00%

\$2,175.00

\$2,175.00

(B) Brokerage and Commission on current market's rate @ 5.0%

\$1,875.00

\$1,875.00

NET DUE TO OWNERS ON CHARTER HIRE

\$284,356.50

UNITED STATES DOLLARS TWO HUNDRED EIGHTY FOUR , THREE HUNDRED FIFTY SIX AND FIFTY CENTS ONLY

Please arrange to remit to our nominated bank account details as under :

Banking Details :-

EGNATIA BANK

PIRAEUS BRANCH

CODE 301

GREECE

SWIFT : EGNAGR2T

IBAN : GR65 0280 3010 0000 0009 5289 424

ACCOUNT NR : 0095289424

FOR THE CREDIT OF:

MOUNTIKO MARINE COMPANY LIMITED

s.e.&o.

for MOUNTIKO MARINE COMPANY LTD

MOUNTIKO MARINE
COMPANY LIMITED

Nicosia, Cyprus

F. Zalechoris

(authorised signatory)

NICOSIA, CYPRUS

16 Nov 06 17:23

p. 2

MOUNTIKO MARINE COMPANY LTD.

Date: 13th November 2006

M.V. PELAGOS

Voyage No. 3

A/C: M/s. FORBES GOKAK LIMITED - C/P Dated 01.03.2006

CHARTER HIRE INVOICE - NO 19 (19th HIRE)

Details	In service from	Rates (\$)	From (Gmt)	To (Gmt)	Total Amount (\$)
Time Charter	10/03/2006 00:01	7,250.00	10/11/2006 00:01	30/11/2006 00:01	145,000.00
C / E / V		1,200.00	per month		800.00
					<u>\$145,800.00</u>

TOTAL HIRE DUE \$145,800.00

PLUS:

(A) Unpaid invoice No 18 / 02.11.06

\$284,356.50

(B) Difference in Charter/Hire rate i.e. 20/days @ 6,250.00

\$125,000.00LESS: DEDUCTIONS

(A) Brokerage and Commission on agreed hire rate @ 5.00%

\$7,250.00\$2,175.00

(B) Brokerage and Commission on current market's rate @ 5.0%

\$6,250.00\$1,875.00

NET DUE TO OWNERS ON CHARTER HIRE

\$551,115.50

UNITED STATES DOLLARS FIVE HUNDRED FIFTY ONE THOUSAND, ONE HUNDRED FIFTEEN AND FIFTY CENTS ONLY

Please arrange to remit to our nominated bank account details as under :

Banking Details :-

EGNATIA BANK

PIRAEUS BRANCH

CODE 301

GREECE

SWIFT : EGNAGR2T

IBAN : GR65 0280 3010 0000 0009 5289 424

ACCOUNT NR : 0095289424

FOR THE CREDIT OF:

MOUNTIKO MARINE COMPANY LIMITED

s.e.&o.

for MOUNTIKO MARINE COMPANY LTD

~~MOUNTIKO MARINE~~
COMPANY LIMITED
Nicosia, Cyprus

Pizalachoris
(authorised signatory)

NICOSIA, CYPRUS